

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2:18-cv-01471-JCM-VCF

MOTION FOR APPOINTMENT AS LEAD PLAINTIFF
AND APPROVAL OF COUNSEL [ECF No. 15]

Plaintiff,

SWITCH, INC., *et al.*,

Defendants.

BACKGROUND

On August 10, 2018, Farach filed a motion for appointment as lead plaintiff in this case and for approval of counsel. (ECF No. 15). Farach argues that he is the presumptive most adequate plaintiff, and no other potential lead plaintiffs can rebut the presumption in Farach's favor. (*Id.* at 3-7; ECF No. 23 at 2-4). Farach also asserts that his choice of counsel, Glancy Prongay & Murray LLP as Lead Counsel and Muehlbauer Law Office, Ltd. as Liaison Counsel, is qualified to handle the case and should be approved.

1 (ECF No. 15 at 7). Two other motions for appointment as lead counsel were filed (ECF Nos. 16, 19), but
2 they have since been withdrawn (ECF Nos. 22, 24).

3 ANALYSIS

4 In appointing a lead plaintiff in securities class action litigation,

5 the court shall adopt a presumption that the most adequate plaintiff...is the
6 person or group of persons that--

7 **(aa)** has either filed the complaint or made a motion in response to a notice
8 under subparagraph (A)(i);

9 **(bb)** in the determination of the court, has the largest financial interest in
10 the relief sought by the class; and

11 **(cc)** otherwise satisfies the requirements of Rule 23 of the Federal Rules of
12 Civil Procedure.

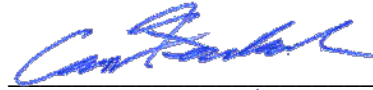
13 15 U.S.C. § 78u-4(a)(3)(B)(iii). The presumption may be rebutted if a member of the purported class
14 submits proof that the presumptively most adequate plaintiff will not adequately protect the interests of
15 the class or is incapable of representing the class due to unique defenses available against him or her. *Id.*
16 “The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to
17 represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v).

18 Farach is the presumptively most adequate plaintiff in this case. He filed a timely motion in
19 response to the notice published on Business Wire. (ECF No. 15). Of the three individuals or entities that
20 submitted motions for appointment as lead counsel, Farach demonstrated the largest financial interest in
21 the case. (ECF No. 23 at 3). Farach satisfied the requirements of Federal Rule of Civil Procedure 23 in
22 that his claims are typical of the claims of the class and he is an adequate representative of the class. (ECF
23 No. 15 at 6-7). In addition, Farach’s choice of counsel appears to be well-suited to the needs of the case.
24 (*Id.* at 7). No other purported class members have disputed Farach’s ability to serve as lead plaintiff in
25 this case.

1 Accordingly, and for good cause shown,

2 IT IS HEREBY ORDERED that Oscar Farach's Motion for Appointment as Lead Plaintiff and
3 Approval of Counsel (ECF No. 15) is GRANTED.

4 DATED this 6th day of September, 2018.

5 

6 CAM FERENBACH
7 UNITED STATES MAGISTRATE JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25